SUPREME COURT

Opinions Were Handed Down Last Wednesday. .

AN IMPORTANT CASE DECIDED

Deed of Trust and Rental Contract Obtained By

(Special to The Times-Dispatch.)
WYTHEVILLE, VA., July 3.—The Suopinion last Wednesday, on which day the court adjourned until September:

in Kane vs. Quillin et al, from the Circult Court of Scott county, affirming the

It was charged by Mrs. Quillin that It. 8. Kane obtained by fraud and misrepre contract from her on a lot in Gate City to secure the payment of two judgments of the deed, and she prayed that the said deed and rental contract might be de-

deed and rental contract might be de-clared null and yold.

The Circuit Court decreed in accordance with her prayer, and Kane appealed to the Supreme Court.

Before the death of Mrs. Quillin's hus-band a creditor's suit was brought against him, in which it was sought to subject the house and lot in Gate City to the sat-faction of their inderness alleging the house and lot in Gate City to the sat-lafaction of their judgments, alleging that the house and lot were purchased by Quillin and caused to be conveyed to his wife as her separate estate in fraud of the rights of his creditors. Kane inter-vened in this suit by petition, but no ac-tion was taken upon it and with Kane's consent the suit was dropped from the docket, he expecting to be paid from another source.

udge Keith states that the evidence ows that Kane called upon Mrs. Quillin king with him copies of certain judg-ents which he had obtained against her sband, with a contract providing for e resting of her house and lot and a deed of trust upon it to secure his debts, and accompanied by a justice of the peace; that by his representations and the exhibition of the copies of the judgment and papers, their effect doubtless strengthened by the presence of the justice of the peace, whether intentionally or not, he created upon her mind the impression that he had it in his power to sell her property for the satisfaction of his demands, and that the only mode of postponing this disaster was by signing the rental agreement which placed the rents of the house and lot at his disposition, and the deed of trust as ultimate security for the satisfaction of the judgments. The principal judgment is said to have been at that time barred by the statute of limitations.

The court holds without deciding whether the smalled judgment was barred at the date of the execution of the deed of trust that the dead of the deed of the said that the dead of the deed of the said that the dead of the deed of the said that the dead of the deed of the said that the dead of the deed of the said that the dead of the said the dead of the said that the said

at the date of the execution of the deeat the date of the execution of the deed of trust that Kane obtained the deed of trust an drental contract from Mrs. Quillin by the exercise of undue influence, and that there was no error in the decrea of the Circuit Court, which is affirmed.

It is stated, however, that the affirmance is without prejudice to the right of Kane to subject the house and lot in Gale City to the payment of the

lot in Gate City to the payment of the smaller judgment, provided he is able to aver and prove actual fraud on the part of W. B. Quillin, and his wife, in the deed conveying the house and lot to Mrs.

For Death of A Boy.

In Virginia Iron, Coal and Coke Company v. Tomlinson's administrator, the judgment of the Circuit Court of Wythe county is reversed. Judge Buchanan handed down the opinion of the court.

There was a recovery of \$3,000 in the lower court against the Virginia Iron, Coal and Coke Company for the death of Vivian P. Tomlinson, a boy eleven

Coal and Coke Company for the death of Vivian P. Tomlinson, a boy cleven and a lialf years of age, who was employed by that company in a "buddle," or ore washer.

This boy's duties consisted of picking mud buils from the ore as it passed through a chule on the fower floor of the buddle, and he was found crushed

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to death between the cog wheels of the sand-washer, which was on the second floor or level. There was no direct evidence as to how he came in contact with the cog wheels and lost his life, but it was claimed by the plaintiff that the belt on the sand-washer was slipping, as it sometimes did, and the boy, who had been directed by the foreman of the buddle to start the belt when it stopped, was attempting to start it by catching hold of the sill to which the roof was fastened, swinging down and tramping upon the belt with his feet, and that while so engaged he fell or was thrown between the cogs below. This mode of starting the belt, it was charged, was dangerous and beyond the scope of the boy's duty, and that he was not warned of the danger.

It is held to have been error to admit

of the danger.
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It is held to have been error to admit opinion or expert evidence as to whether the method of starting the belt above referred to was dangerous, because the record showed that such a mode of starting the belt, especially by a child eleven and a half years of age, was manifestly dangerous, and that jurors or men of ordinary intelligence generally would be just as competent to form an opinion and determine whether or not it was dangerous as the witnesses. It is said, however, that the error was harmless.

Evidence admitted by the lower court to the effect that the defendant company permitted other children working about the buddle to ride upon cars which brought ore from the mine, or to go in or near other dangerous places upon the top of the buddle, is held to have been inadmissible; though it is said that it was not error to permit the plaintiff to prove that children were permitted by the company to go, or that they went with its knowledge and without objec-

was not error to permit the plaintiff to prove that children were permitted by the company to go, or that they went with its knowledge and without objection, into or about the place where Tomlinson lost his life.

With reference to the degree of care due by the master to an infant employe of tender years, it is stated that it is much greater than is due an adult; but whatever its degree, it is ordinary care under all the facts and circumstances of the case. An instruction which told the jury that the law required of the master the highest degree of responsibility for the care and protection of an infant employe is, therefore, held to have been erroneous, in that 't did not correctly state the law as to the measure of the master's duty.

A number of other assignments of error are considered and overrued; but for the errors stated above the judgment is reversed and the cause remanded for a new trial.

DIVISION OF ESTATE.

DIVISION OF ESTATE.

reversed and the cause remanded for a new trial.

DIVISION OF ESTATE.

Upon the death of his mother, followed shortly by that of his infant brother, R. Bowen Watts fell heir in 1820 to his mother's interest, in a valuable farm near Tazewell Courthouse of 494 acros. His father, John G. Watts, married again in 1822 a widow with four sons, all of whom came to live upon his farm, and in 1832 to father conveyed to his second wife all of his interest in the farm except 101 acros, which was conveyed to a trustee for the benefit of his creditors. From the death of his first wife to the date of the conveyance to his second wife the entire property was in the exclusive possession and control of John G. Watis, who enjoyed and appropriated to himself the entire rents and profits.

R. Bowen Watts brought suit by his next friends and guardian for a partition of the land and to recover his share of the rents and profits due him since the death of his mother; and upon the partition was assigned 284 acres, with the residence and other buildings thereon. After the death of his father, the suit was revived in the name of Mrs. F. G. S. Watts, executrix, and referred to a commissioner to ascertain how much was due R. Bowen Watts on account of rents and profits from the estate of his father, and from the defendants, Mrs. F. G. S. Watts and her two sons, D. H. Smith and J. T. Smith, for their alleged use and occupation of land of complainant, with any credits to which they were entitled. It is over the report of this commissioner and the action of the lower court thereon that the controversy in the case of Watts vs. Watts's executrix, before the Bupreme Court, arises, and in which Judge Harrison handed down the opinion of the court, reversing the decree of the lower court.

It is held that the lower court properly dismissed the bill as to the defendants, D. H. and J. T. Smith, that John G. Watts occupied the relation of de facto guardian to his infant son from the death of his frat wife until the date of the conveyance to his second

Bowen Wattis's share of the rents and profits received by them, respectively, during the period that each enjoyed the whole estate.

The court is of opinion that in ascertaining the amount for which appellees are respectively liable, the annual rental value of the 284 acres, with the improvements, should be taken, and not 284-494 of the annual rental value of the 284 acres, with the improvements, should be taken, and not 284-494 of the annual rental value of the 284 acres from \$1,400 to \$852 per annum, but the amount is left open so that the commissioner may again consider the subject; that in the account of John G. Watts, as de facto guardian, he should be credited with \$2,830.83 as of October 16, 1901, the presumption being that, as he was indebted to his son at the time, the money, when placed in bank to his credit, was intended as a payment on account and not a gift.

It is further held that, looking at the circumstances of the case, having in view the position and wealth of the parties, it was the duly John G. Watts to support and mantenance of complainant from 1850 to 1850, during which time he was in possession of the entire farm; that there was no error in allowing Mrs. F. (1. S. Watts compensation for the support and mantenance of complainant from 1850 to 1850, during which time has had possession of the entire farm, but the amount of \$150 per annum is left open for further inquiry by the commissioner as to its adequacy.

The court is of opinion that the cause sion of the entire farm, but the amount of \$150 per annum is left open for further inquiry and change in his fladings. The decree is, therefore, reversed, and the cause remanded for further inquiry and change in his fladings. The decree is, therefore, reversed, and the cause remanded for further inquiry by the commissioner as to its adequacy.

In the case of Big Stone Gap Iron Company vs. Olinger, from the Creuit of Lee county, Olinger sud the proceedings.

In the case of Big Stone Gap Iron Company vs. Olinger, from the Creuit of the county of th

that much merchantable ore on the land capable of being mined at a reasonable cost. The royality on the minimum amount each month was to be paid by the lessee, whether it was mined or not, but he was to have the right to mine the deflect of any month during the next month or at any time during the lease, without again paying therefor. The lessee might also at any time reschad and cancel the lease by paying the less or the amount of one year's royally.

The Iron Company gave notice to Olinger on March 25, 1900, that on the 1st of April all work on the leased property would be abandoned. It was claimed that merchantable ore could not be found on the land capable of being mined at a reasonable cost. Upon the work being abandoned Olinger instituted this suit against the company, and recovered in the lower court a judgment for \$1,501.50.

Upon the writ of error allowed by the Sutgeme Court, Judge Harrison hands down the opinion of the court, in which he declares that the selequisation to be submitted to the jury was, "Did the Iron Company make a bona fide effort to discover and mine the ore, sa did it act in bad faith and abandon the enterprise without having made proper and mine the over and mine the ore."

prise without having made proper and sufficient effort to discover and mine the ore?"

The lower court gave two instructions, which are held to have been misleading and confusing, because they invited the jury to consider whether the mining lease, or contract, was canceled under a certain clause of the contract, when there was no evidence tending to show that fact. It is said that on the contract, the whole evidence showed that the contract was abandoned because, as claimed, the ore was not there in sufficient quantity and quality to be mined at a reasonable cost?

It is said that the jury should find for the plaintiff the minimum royalities due him under the contract, if they believed from the evidence that the defendant company acted in bad faith and abandoned the enterprise without having made proper and sufficient effort to find and mine the cre.

For the same reason is was held to have been error to put an addendum to another instruction which referred to cancellation of the contract under the same clause.

These were the only errors found, the other assignments being overruled. The payment is reversed and the case remanded for a new trial.

LAND TITLES.

In Dunn et als, vs. Stowers et als, Judge Cardwell handed down the opin-

payment is reversed and the case learn manded for a new trial.

LAND TITLES.

In Dunn et als, vs. Stowers et als., Judge Currdwell handed down the opinion, which a fifth mis the decree of the Circuit Courr of Bland county.

The controversy in this case was as to the sufficiency of the lot three contiguous tracts of land, which by controt, or title bond, dated September 5, 1909, James M. Stowers and his wife contracted to sell to D. W. Dunn and others, in consideration of \$4,000, divided into three equal payments, for which they executed three bonds.

Dunn and his associates took possession of the lands in May 1891, and made a number of payments upon the several bonds between May 1, 1891, and made a number of payments upon the several bonds between May 1, 1891, and July 2, 1865, but did not pay any of the interest of the lands of the lands in a first the death of Mrs. Stowers on January 1833. Of those lands 5-14 were owned by Mrs. Stowers, who acquired them as the sole helr of her father, Joseph Lambert, who did in March 1890. The title to the balance of the lands was acquired by James M. Stowers, her husband, from parties who acquired them as the sole helr of her father, Joseph Lambert, who did prior to the death of Joseph.

A suit at law having been instituted by Stowers to recover the purchase money evidenced by the bonds, Dunn and his associates filed a bill in chancery, calling upon the Stowers and the children and heirs at law of Mrs. Stowers to exhibit title to the court in order that it might be inspected and all questions concerning the title inspected and all questions concerning the title inspected and all questions concerning the title inspected and all questions concerning the internity of the contract by which Stowers and the children and heirs at law of Mrs. Stowers to exhibit title to the court in order that it might be applied and the purchase means the contract by which Stowers and whe death of the purchase means the recover the purchase means the contract by which Stowers and whe for purchase

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might be receited and the purchase money therefore pair referred. Mr. and the lands, the purchase money bonds the lands, the purchase money bonds that appellants were of opinion that after the death of some polison of the Creati Court four the lands of the purchase money bonds that appellants were of opinion that after the death of Mr. Stowers, and were the death of Mr. Stowers, and the death of Mr. Stowers, and the lands of the land to predict the control of the wife, if ordinarily sufficient to the state of the wife, if ordinarily sufficient to the state of the wife, if ordinarily sufficient to the state of the wife, if ordinarily sufficient to the state of ant denying the right of the personal representative of a non-resident alien to maintain an action for his each, which the lower court rejected.

Passing upon the error assigned to this action, the opinion says that at common law an alien domiciled in a country is entitled to the protection of its laws; that he is subject to the law, as well'as entitled to its protection; is liable to be tried and punished for crime and may sue and be impleaded in the proper courts to the same extent as a citizen. Our Legislature, it is saw, seems to have intended to extent rather than abridge the liberal policy of the common law with respect to aliens. It is found that the status of the parties entitled to the recovery in an action for death by wrongful act, rather than that of the decedent.

BALTIMORE MAN SHOT

Was Engaged at Futile Effort to See Girl—Now in Jail.

BALTIMORE, MD., July 3.—James Ream was shot and killed yesterday ful act, rather than that of the decedent of his home, by his prother Har.

AND KILLED BROTHER

Was Engaged at Futile Efforts

BALTIMORE, MD., July 3.-James E. Ream was shot and killed yesterday in front of his home, by his brother Harry, who fired a second shot, it is said, intended for another brother, William. There had been a love affair between Harry Ream and Miss Jennie Hutton, a sister of Mrs. James E. Ream, but it was broken off because of mishehavior on the part of Harry Ream. Miss Hutton became a guest at the house of her sister, and she was sought there several times by Harry Ream, though her presence in the house was denied and he was refused admittance because of his intoxicated condition. When Harry again went to the house yesterday for the purpose of seeing Miss Hutton, his brother, James, took him to task for his conduct. Enraged at this, Harry dared James to come out on the pavement.

James did so, apparently for the purpose of pacifying his brother, and was followed by the other brother, William, Backing into the street, Harry drew a pistol and fired, the builtet passing through the victim's right lung. William threw the fraticide down, when the latter fired the second shot, which went wild.

The wounded man managed to drag BALTIMORE, MD., July 3.-James E.

ter fired the second shot, which went with wounded man managed to drag times of to his brothers, who were wrestiling in the street, and got pessession of the pistol, which he handed to his wife, who was the first to reach him after the shooting. The wounded man was hurried to a hospital, but died upon reaching there. Harry Ream is under arrest.

CRUELLY BEAT CHILD.

Father Under Arrest for Brutally

Father Under Arrest for Brutally
Whipping Little Girl.

(Special to The Times-Dispatch.)
ASHBVILLE, July 3.—L. Dunn, of this oity, has been committed to court to answer to a charge of crually, beating his small daughtey. The child, when examined, was found to be seriously injured, as a result of a whipping about the head and neck. Her ear drum is thought to be broken and blood continued to flow from it for twenty-four hours after the indury was received.

The father claimed that the girl stole money from him, and alleged this as the cause of the whipping. The man's children have been placed in the county home.

New Kent News.

(Special to The Times-Dispatch.)

NEW KENT COURTHOUSE, VA.,
July 8.—The game of base-bail to have
been played at Providence Forge Friday was rostroned until next Friday, on
account of one of the Charles City boys
gaiting hurt.

All, Douglas Christian and son were
guests of Mr. and Mrs. F. N. Harris
Sunday evening.

Airs, P. B. Pomfrey, of Richmond, is

-SECURE-VIRGINIA CHARTERS.

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Virginia Corporation Company, Inc., American National Bank Building, RICHMOND, VA

All, and strs. Roywood Appearant sports Sunday evening with Mr. and Mrs. R. L. Griffith.

Miss Matilda Apperson will leave to-day for Asheville, N. C., to spend the summer with her sister, Mrs. Mesinhimer.
Miss Bena Whitlock is visiting Mrs.
J. W. Timberlake, of the courthouse.
The Board of Supervisors meet to-day
to attend to the regular business.

C. & O. JULY--4th--JULY

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